



**MINNESOTA TEAMSTERS PUBLIC & LAW ENFORCEMENT EMPLOYEES' UNION,
LOCAL NO. 320, STATE OF MINNESOTA**



AFFILIATED WITH
International Brotherhood of Teamsters

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January 9, 2020

Hennepin County Attorney
Michael Freeman
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

County Attorney Freeman,

Teamsters Local 320 represents more than 10,800 public employees statewide, including more than 316 licensed Peace Officers within Hennepin County. I write on behalf of those Officers to express Local 320's grave concerns with your office's practices regarding Officer Involved Shootings (OIS).

Your Office's OIS Protocol states that an investigating agency is expected to "seize any cell phone in possession of the involved officer(s), including work-issued and personal phones in their possession before and after the event," as well as to "analyze cell phones and their associated data" as requested by your office. According to news reports, the purpose of seizing both work- issued and personal cell phones is to "understand the 'state of mind' of officers under investigation" following a critical incident.

Peace Officers who carry personal cell phones, and who do not use those phones for work-related activities, have a reasonable expectation of privacy with respect to those phones. Absent some particularized reason to believe that a phone contains information relevant to an OIS investigation, seizure of a personal cell phone without a warrant would be unjustifiable and a direct violation of the officer's Fourth Amendment rights. It is troubling that your office's Media Coordinator is quoted in news reports as saying "there are no privacy rights in a criminal investigation," a position which turns the Constitution on its head and is directly refuted by the Minnesota Supreme Court. *State v. Barajas*, 817 N.W.2d (Minn. 2012) ("reasonable expectation of privacy" in the contents of a cellular telephone). Local 320 respectfully requests that this practice cease immediately and your OIS Protocol be revised accordingly.

Local 320 has advised our members that if they are involved in an OIS, they should not voluntarily relinquish their personal cell phones to investigators until they have consulted with their union representatives and/or legal counsel. We have also encouraged our members to ensure that access to their personal cell phones is protected by a password rather than a thumbprint or other biometric mechanism. Please know that Local 320 is prepared to seek immediate injunctive relief to prevent an unlawful seizure and otherwise protect our members' constitutional rights if an investigating agency attempts to seize a personal cell phone without legal right or justification.

Unfortunately, the trampling of constitutional rights within your OIS Protocol does not end with the unauthorized seizure of personal property; the OIS Protocol provides that the investigating agency should:

Obtain complete personnel file for involved officer(s), including training records, previous complaints and investigations, hiring information, fitness for duty information, and psychological records as appropriate or applicable. If originating agency will not consent to the release, obtain a search warrant.


The records listed in this section include those typically containing private and highly personal data, such as background investigation and psychological employment screening records.

Specifically, it has come to our attention that, in connection with the investigation into an OIS that occurred in September 2019, your office has repeatedly requested copies of personnel records for the officers involved in the incident. This practice is alarming, as this not public data has no relevance to the question of whether the officers acted reasonably on the night in question. It is my understanding that the City of Edina properly refused to provide this private data and has had to repeatedly explain its legal rationale for doing so under pressure from your office. The unfortunate response has been that the Hennepin County Attorney is demanding this private and highly sensitive personal data, accompanied by the threat of a search warrant (as outlined in your OIS Protocol). A pre-employment psychological evaluation has no relevance to an OIS that occurred several years later. It is my understanding that your office seeks to review the documents so they can say they did it as part of their investigative process. If this is the case, then it is tantamount to an admission that this information is not relevant and is merely being done as a political ploy. In other words, it is a waste of government time and resources. While I hope that a court would reject such a blatant fishing expedition, such a demand is alarming given that your office will ultimately issue a report on its charging decision that will undoubtedly be made publicly available, and which may refer to private data unrelated to the OIS. I respectfully request that this section of the OIS Protocol be modified accordingly.

Local 320 intends to continue to monitor these situations closely and to take legal action as necessary. Please be advised that, by this letter, Hennepin County and the Hennepin County Attorney's Office are placed on express notice of their obligations under the Minnesota Government Data Practices Act. Any unauthorized release of not public data will be litigated to the full extent of the law where we will seek a determination that any such release was willful pursuant to Minn. Stat. § 13.08, subd. 1 and will request criminal charges and termination from employment in accord Minn. Stat. § 13.09.

Thank you for your attention to these matters.

Respectfully,
TEAMSTERS LOCAL 320


Brian Aldes
Secretary-Treasurer

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